



**Research and Documentation
Directorate**

RESEARCH NOTE

**Management autonomy of national sports federations and
whether public procurement rules apply to them**

[...]

Subject : Nature of the relationship between national sports federations and the national public authorities in ten representative Member States of the European Union, and assessment of their management autonomy and whether there is control exercised by the national public authorities to such an extent that those federations are made subject to public procurement rules.

[...]

May 2020

[...]

SUMMARY

I. INTRODUCTION

1. The Research and Documentation Directorate (DRD) received a request for a research note on the nature of the relationships between, on the one hand, national sports federations (all disciplines taken together) and, on the other, the national public authorities and international bodies in ten representative Member States of the European Union [...]. In particular, it was asked to verify whether or not national sports federations have management autonomy in those Member States and, if so, whether and to what extent such management autonomy is limited by control exercised by the national public authorities to the point that the federations are subject, in whole or in part, to public procurement rules.
2. To that end, this research note covers the legislation applicable in **Germany, Cyprus, Spain, Estonia, France, Lithuania, the Netherlands, Poland, the Czech Republic and Romania.**

A. METHODOLOGY

3. Against that background and in the absence of documentation from alternative sources, lawyers from the Research and Documentation Directorate searched for relevant documentation exclusively on the Internet.¹

¹ Following Covid-19 containment measures established by the Court in March 2020, it should be noted that this research note was compiled in a remote working environment between 6 April and 2 June 2020. In that regard, in so far as the availability of relevant documentation varied unevenly across the Member States in question, it should also be noted that the content of the national contributions and the detail contained therein may vary significantly from one to the next.

4. As a result, there may have been difficulties in accessing relevant information. Some of those difficulties were caused by the type of information required in some cases. Since sports federations are usually set up as associations, they are not required to publish founding documents or texts governing the functioning of the association and, when they do, they are not necessarily published on the Internet. This sometimes resulted in difficulties in obtaining an accurate and representative picture of the operation of the sports federations for the purposes of comparison.²
5. To that end, a preliminary question arose as to whether there is a centralised or supervisory body governing sport in the Member States in question that is likely to adopt uniform rules – standards, recommendations, rules of conduct, soft law – in respect of the sports federations. Where there is no centralised body, the sports federations in question may operate – within the limits of their articles of association – according to different rules, by having adopted their own practices.³
6. Lastly, it is worth noting the – very broad – material scope of this research note. It focuses, at the same time, on the structure of the sports systems within each Member State with regard to the role played by the State, private law on associations, administrative law on the performance of public service tasks and, *in fine*, within the limits of the information available in that regard, public procurement law in the Member States in question and the practice of sports federations in this area.

² The commercial, private and therefore often confidential nature of contracts for the supply of goods or services concluded by sports federations, *a fortiori* when they are entered into for amounts below the thresholds set by Directive 2014/24/EU or under national legislation, means, for example, that it is difficult to find information – at least for a reliable and representative picture to be obtained – concerning the practices of federations in that regard (see section IV).

³ [...].

B. PRELIMINARY OBSERVATIONS ON SPORTS ASSOCIATIONS

7. The analysis of whether national sports federations have management autonomy in the Member States and to what extent that autonomy is limited by the control of the national public authorities, to the point that the federations are subject to public procurement rules, is characterised by various features.
8. The analysis of the structure of national sports systems reveals, first of all, the multi-dimensional nature of such systems which are, in many respects, hybrid systems in that they bring together local, national and international policy issues, resulting in complex interactions between the private (associations), public (role of the State) and commercial sectors. Those issues are just as much linked to individual freedom, the public/general interest (social objectives of promoting the practice of sport, public health and education grounds, maintenance of public order, etc.) as to the interest of the general public (sports competitions, sports events, the economics of sport, etc.), the adoption of and compliance with technical sports rules, and the consideration of purely financial aspects.
9. In that context, it is not surprising to see that the structure and legislation relating to the organisation of the practice of sport in the Member States is constantly changing (this research note was compiled against the background of ongoing or recent reforms in, in particular, **France**, **Lithuania** and **Spain**) and that it is not systematically subject to codification in the legal systems in question.
10. Associations, governed by private law rules adopted in a largely autonomous manner, are the main structure for organised sports practice by citizens. The sports systems in the Member States are characterised by the vertical overlay of various strata of associations (clubs, national federations, national Olympic committees) which then come into competition with the natural regulatory authority of the State.

11. In that regard, it should be observed that the international association movement largely preceded the State in consolidating the association movement at national level. Thus, the organisation of international sports events from the end of the nineteenth century led to the creation of international sports bodies⁴ in the form of associations, according to discipline, in various formats, with each national sports federation representing a particular discipline within a corresponding international federation. This pre-existing organisation of sport at international level was thus based on a pyramid structure, with practitioners at the base and national and international sports federations at the top; the same model as that adopted by the International Olympic Committee ('the IOC'). The unitary organisation of the international sport movement throughout history, guaranteed by the monopoly of international federations over their discipline, has long provided 'supra-national' competition for the authority – and potential monopoly – of the State over sports-related issues at national level.⁵

12. For the purposes of this study, it must be noted that the identification of criteria relating to the management autonomy of sports federations in view of possible State intervention in their functioning was carried out having regard to

⁴ The first international sports federation was the Yacht Racing Association set up in 1875. The International Show Jumping Club was created in 1878. FIFA was created in 1904.

⁵ In that regard, so far as concerns their impact on the organisation of competitions, the relationships between national sports federations and corresponding international sports federations have been examined only in so far as they are likely to have an impact on the relationships between national sports federations and national public authorities in terms of the management autonomy of national sports federations.

specific rules on the regulation of sports associations – it being presumed that such specific rules existed, but that this may vary from one Member State to another – that the basic legislation on associations constituted the general law applicable to sports federations and thus the semblance of a minimum common core for the purposes of this study. A different approach would have resulted in the contributors carrying out a thorough analysis of the law on associations which, in the light of the issue ultimately to be addressed by this note (the application of public procurement legislation), was not the subject of investigation.

C. PRELIMINARY OBSERVATIONS ON PUBLIC INTERVENTION

13. In the same vein, it is necessary to state that, whilst public policy grounds and a regulatory framework (public health requirements, anti-doping, policing and security of sports events, certification of sports teaching) also characterise the intervention of the State in the functioning (which could be described as ‘external’ intervention in that respect) of sports federations, such intervention essentially meets the supervisory needs of the sports activity in question and does not appear significant, despite the obvious authority of such regulations, for the purposes of this note and for the characterisation of the possible management autonomy of federations in relation to the State. The explanations related to those factors in some of the contributions are therefore included only for illustrative purposes with regard to the sports system in question and are not the subject of this summary. The same is true of explanations relating to the activity of federations so far as concerns sports rules *stricto sensu*.⁶

⁶ A large proportion of the activity of the various actors in question concerns the adoption or implementation of substantive sports rules, of a technical nature, which are not the subject of this research note.

14. Sport is therefore organised, generally speaking, without State intervention. The link between the organisation of sport and the recognition of a public service mandate is not therefore completely obvious in each State. Two trends, one called ‘state’ or ‘interventionist’ (**Spain, France, Poland, Romania**)⁷ and the other called ‘liberal’ (**German, Estonia, the Netherlands**), exist, with numerous variations (**Cyprus, Lithuania, the Czech Republic**) linked to the material scope of State intervention and the level of control exercised over sports federations. Such trends are logically seen in the organisation of sports systems and their structures.
15. Thus, with regard to the organisational structure of the national sports systems in question, the large variety of choices made by the Member States should be noted at the outset. Depending on the powers that may be delegated, the prospect of State intervention extends to centralised systems, in which the power remains in the hands of ministerial authorities, or decentralised departments thereof, and the delegation of such power to intermediary decision-making or advisory bodies, extending in some cases to the delegation of some powers to private law entities such as, here, the National Olympic Committees.

⁷ [...].

SPORTS SYSTEMS AND STATE INTERVENTION ⁸		
<u>Organisation with regard to the centralised/decentralised structure of the system ⁹</u>		
Centralised structure	Decentralised structure	Liberal structure
(Supervision exercised only by ministerial authorities and decentralised departments thereof)	(Existence of a public law legal entity in the national sport organisation)	(Existence of a private umbrella organisation (Olympic committees) exercising a special mandate allocated by the State/ an intermediary role in the national sport organisation)
FR ¹⁰ ES ¹¹ LT ¹² PL RO	FR ¹⁰ CY CZ	FR ¹⁰ DE EST NL

16. Functionally, in so-called '*liberal*' countries, the organisation of sport enjoys significant administrative and regulatory autonomy, with only minimal State intervention seemingly limited to financial contributions to the sport movement, through

⁸ [...].

⁹ Apart from mandates strictly related to sport or sports regulation.

¹⁰ Mandates are divided in France between three different types of stakeholders (Ministry of Sports, ANS (National Agency for Sport), CNOSF (French Olympic Committee)).

¹¹ By/assisted by a specific national body that is not an autonomous legal entity.

National Olympic committees, which they redistribute to affiliated sports federations, thus providing justification for monitoring the use made of them (the only control exercised). In so-called ‘*State*’ systems, the recognition that sport constitutes grounds for State intervention, on a priority basis, in the general interest justifies greater control over the creation and functioning of sports federations. Access to public funding dedicated to sport (beyond the public subsidies likely to be allocated, in general, to associations) is subject to recognition – in a more or less formal way – by the State that, at the very least, a general interest mission is carried out. It is necessary, however, to point out in that regard the difficulty of classifying, from a comparative law perspective, the modalities of that recognition, both in terms of its possible exercise and the consequences that follow, of a public service mandate in the different legal systems in question and whether it complies with specific characteristics under the administrative law of each Member State.

17. More generally, comparative studies carried out on this subject rely on different typologies of organisation based on various parameters that do not fully or exclusively correspond to those used in the present study,¹² with the result that there does not seem to be one typology to be used here.

¹² They make a distinction between, in particular, *bureaucratic*, *entrepreneurial*, *missionary* and *social* models (Camy, 2004) or according to the role played by the competent ministerial authority in the determination and implementation of the ‘policy on sport’, the situation of territorial decentralisation in that regard and the allocation or delegation of responsibility for sport to private intermediary organisations (Houlihan, 1997), see Scheerder J., Willem A., Claes E., note 8, p. 7 to 13, p. 307 to 315. In that regard, attention should be drawn to the conclusions of a report published in 2017 by the French Ministry of Youth and Sport, stating that the international comparison of the sports systems in question should be kept in context and assessed in proportion to its difficulty: ‘the comparative study of the different models of sports organisations in European and non-European countries turns out to be a complex exercises in so far as each country has its own history, culture, state organisation, policy on sport, education system [...]’, see *Mission relating to the French Sports Model: status of the relationship between the State and the sport movement*, Report 2017-M-20,

18. For the purposes of this study, we will examine, in the first place, the organisation of sport on a national basis in each of the ten Member States in question (II), before analysing, in the second place, the powers of control exercised by the public authorities over the management of sports federations (III). Lastly, the applicability, in the ten legal orders in question, of public procurement rules to sports federations is considered (IV).

II. ORGANISATION OF SPORT ON A NATIONAL BASIS

19. The comparison of the organisation of sport on a national basis in the ten Member States covered by this study reveals some commonalities with regard to the choice of the legal form of sports federations and the overall structure of the sport movement (A). By contrast, the national framework for sport (B) and the financing of sports federations (C) follow a very different method of organisation in those ten Member States.

A. LEGAL FORM OF SPORTS FEDERATIONS AND STRUCTURE OF THE NATIONAL SPORT MOVEMENT

20. In the ten legal orders covered by this study, sports federations have the legal form of an association with legal personality governed by private law and are generally formed on a not-for-profit basis. As such, the various national laws acknowledge their autonomy vis-à-vis public authorities and the right to self-organisation. The associations also have the common social objective of promoting one or more sports disciplines.

It follows from their autonomous status as an association that the State does not have the power to require that it be represented within the federations.

21. Another feature common to the ten legal orders being examined is the pyramid structure into which the sport movement is fitted. In each of the ten Member States, sports associations and clubs are at the base of the pyramid. The associations and clubs are members of the national federation in their respective discipline, with the national federations located at the top of the pyramid.
22. In addition, in all of those Member States, there is a national Olympic Commission, which acts as an umbrella organisation, bringing together *a minima*, Olympic sports disciplines. In some Member States, the State has given the national Olympic committee additional powers. It is also apparent that non-Olympic disciplines are sometimes represented by other umbrella organisations.
23. In **Germany** and **Spain**, the overall framework is accompanied by an additional regional level (and even a local level in **Germany**), corresponding to the political-administrative structure in those two Member States.
24. When drafting their articles of association, the sports federations in the ten Member States in question were subject to the general law governing associations in force in each Member State, requiring compliance with founding and structural principles. In **France**, approved sports federations (receiving public funds) have the legal obligation to adopt certain provisions in their articles of association, relating to their democratic functioning and financial transparency, as well as certain disciplinary rules.

B. FRAMEWORK FOR SPORT

1. ROLE OF THE STATE IN THE ORGANISATION OF SPORT ON A NATIONAL BASIS

a) DETERMINATION OF THE NATIONAL POLICY ON SPORT AND LEGISLATIVE FRAMEWORK FOR SPORT

25. In eight of the Member States covered by this study,¹³ the national policy on sport is drawn up at central level, whether under the impetus of one or more ministries (**Cyprus, Spain, Estonia, France,**¹⁴ **Lithuania,**¹⁵ **Poland** and **Romania**) or a central public body designed to implement the policy (**Czech Republic**).¹⁶
26. National sports regulation is an area in which there is significant diversity between the ten Member States in question. Thus, in **Spain, Estonia, France, Lithuania, Poland,** the **Czech Republic** and **Romania,** there is a law or code specific to sport, whereas in **Germany** and the **Netherlands,** there is not. In **Cyprus,** the relevant law concerns the public law body responsible for supervising sports federations. In **Spain,** a decree concerns only sports federations.

¹³ In **Germany** and the **Netherlands,** as will be explained below, it is the sports federations themselves that determine the national policy on sport.

¹⁴ In **France,** the Ministry of Sport is assisted by the CNOSF which plays an advisory role in delegating public service missions to sports federations.

¹⁵ In **Lithuania,** umbrella organisations affiliated to sports federations participate in the development of the national policy on sport for which the Ministry is responsible, assisted by an advisory body (the National Sports Council).

¹⁶ In the **Czech Republic,** the transfer of powers from the Ministry of Sport to the aforementioned central body (ASN) will be completed in 2021. In the meantime, the Ministry of Sport still exercises certain powers in the national policy on sport.

b) NATURE OF THE RELATIONSHIP BETWEEN THE PUBLIC
AUTHORITIES AND THE SPORTS FEDERATIONS

27. In four of the legal orders covered by the study, the organisation of sport on a national basis is structured around a system of *public service for sport*, whose mandates or public administrative functions are delegated to the sport movement. Thus, in **Estonia**, the Estonian Olympic Committee, the umbrella organisation bringing together national federations, has been delegated a public service mandate consisting in the allocation of subsidies to sports federations. By contrast, in that Member State, the administrative chamber of the Supreme Court has held that the organisation of a sports event was not, by its nature, a public mission. Despite the existence of this public service mandate, it appears that, in practice, **Estonian** sports federations have considerable autonomy. In **Spain**, the State has delegated the mandate of promoting sport to sports federations. To that end, sports federations exercise public administrative functions related, inter alia, to the organisation of national sports competitions according to discipline and to the preparation of high-level athletes, acting as State collaborators and being placed under the supervision of an agency of the Ministry of Sport, the Spanish National Sports Council. In **France**, a public service mandate relating to the development and democratisation of sports activities is delegated to approved federations, while specific public service mandates and powers are delegated to federation delegates, the latter holding the monopoly for the organisation of sports competitions. In **Poland**, public service mandates related to the support and promotion of sport have been delegated by the regional and local authorities to sports federations, thus allowing, depending on the case, total or partial funding of those mandates.
28. Although there is no public sports service in **Romania**, the *autonomy* of national sports federations is *limited* by the powers conferred on the public authorities to oversee their management.

As for **Czech** law, it provides that a spirit of *cooperation* characterises the relationships between the national public authority responsible for the determination and implementation of the national policy on sport and sports federations, with the former exercising limited control over the later. The same may also be true under **Cypriot** law, given the commonalities leading to a rapprochement between those two regimes in terms of the framework of the management autonomy of sports federations.¹⁷ It is probably that same spirit of *cooperation* that best characterises the relationship between the public authorities and sports federations in **Germany, Lithuania** and the **Netherlands**, in the light of the significance attached to the autonomy of sports federations in those three Member States.¹⁸

2. PUBLIC AUTHORITIES EXERCISING SUPERVISORY POWERS OVER THE MANAGEMENT OF SPORTS FEDERATIONS

29. Between the ten Member States whose legal systems have been examined, there is also considerable diversity as regards the authority responsible for supervising the management of sports federations. Where there is such power to supervise the management of sports federations,¹⁹ in most cases it is exercised by a public authority.

¹⁷ On those aspects concerning **Romanian, Czech** and **Cypriot** law, see III.

¹⁸ In **Germany, Lithuania** and the **Netherlands**, except for the use of public subsidies, there is no legal mechanism for the active management of sports federations.

¹⁹ It is the concept of ‘collaborative governance’ that is used to describe the relationship in the **Netherlands** between the public authorities and sports federations, which participate actively in the determination of the national sport policy, in Willem A., Scheerder J., ‘Conclusion: The Role of Sport Policies and Governmental Support in the Capacity Building of Sport Federations’ in Scheerder J., Willem A., Claes E. see note 8, p. 305. Since the **Dutch** legal order has been classified, in the context of this study (see III), in the same category of systems as the **German** and **Lithuanian** legal orders, the same relationship qualification should also be applied in respect of those two legal orders.

30. Thus, in **Spain, France,**²⁰ **Poland** and **Romania**, it is the Ministry of Sport that supervises the management of sports federations. In **Germany**, an office attached to the Ministry of the Interior monitors the use of subsidies made by all entities under its jurisdiction, including sports federations. In **Spain**, more specifically, it is an entity attached to that ministry, with legal personality – the National Sports Council – that exercises that supervisory role independently.
31. In **Cyprus** and the **Czech Republic**, this supervisory role is given to a public law body with legal personality.²¹ While in the **Czech Republic**, that body is relatively autonomous, in **Cyprus**, it is subject to supervision by the Minister for Sport.

3. PRIVATE ENTITIES EXERCISING SUPERVISORY POWERS OVER THE
MANAGEMENT OF SPORTS FEDERATIONS

32. In **Estonia**, the monitoring of the use of public subsidies by federations is exercised by a private entity, the Estonian Olympic Committee, which has the legal form of an association, and which is the umbrella association bringing together the various national sports federations. As stated above, this private entity has been delegated a public service mandate for the management of those subsidies.

²⁰ In **France**, the French Olympic Committee may be required, on an exceptional basis and at the request of the State (Sports Code, Article L.131-19) to create, in the absence of a delegated federation for a particular discipline (due to the decision to withdraw or not to renew approval of the public service delegation), a specialised commission whose powers extend to all public power prerogatives granted to delegated federations.

²¹ In **France**, a National Sports Agency was set up in 2019. Endowed with legal personality under public law, its mandate is to provide financial support to sports federations. To date, it is difficult to determine whether it will play a role in the financial supervision of sports federations.

C. FINANCING OF SPORTS FEDERATIONS

33. The study shows that, in the ten Member States examined, sports federations receive public subsidies. However, it has not always been possible to determine precisely whether the sports federations are financed, for the most part, by public subsidies.
34. While it is clear that public subsidies form a minority proportion in the financing (or level of support) of **Dutch** sports federations (they represent between 20 and 30% of their financing), and that, by contrast, this rate of support represents a majority proportion in the financing of **Polish** sports federations, such an affirmative position could not be established in respect of the other eight legal orders, given the difficulty of accessing the annual budgets of those federations and the incomplete information produced by the relevant public institutions.
35. In those other eight Member States, it seems that it depends on the year and the sports discipline in question, as well as the size of the sports federation, its financial situation and the availability of other sources of funding. It appears, in that regard, that the major sports federations, such as national football federations, generally receive a greater proportion (or even, in some cases, majority or exclusive) of resources from private sources than sports federations in other sports disciplines. In several Member States, small- and medium-sized sports federations seem to be financed mainly by subsidies (**Germany** and **Lithuania**). Determining the level of support of **French** sports federations involves an additional difficulty due to the fact that, in France, in addition to the subsidies paid by the public authorities, human resources – technical advisors – are made available to sports federations by the State and paid for by the State. For federations receiving subsidies and human resources, it is probable, in some cases, that the rate of support represents a majority proportion in their financing.

III. SUPERVISORY POWERS EXERCISED BY THE PUBLIC AUTHORITIES OVER THE SPORTS FEDERATIONS

Preliminary observations

36. As stated above, in the ten legal orders examined, sports federations all have the legal form of an association.²² The status of association is accompanied by legal recognition of their autonomy in the management of their affairs. Depending on the overall amount of subsidies received, some associations have specific accounting obligations, meaning that they must report on the use made of public funds. The obligation to report on their activities does not mean, however, that there is direct and invasive control over their management by public authorities.
37. Furthermore, except in **Germany** and the **Netherlands**, there is, in the other eight legal orders in question, a first level of State intervention in the organisation of sport, which consists in the development of a *legal framework specific to sport*.
38. Beyond the identification of that legal framework, the exercise of setting out in detail the scope of the management autonomy of sports federations in the ten Member States concerned, and consequently, reporting on the scope of the various powers exercised by the national public authorities over the sports federations proves to be complex.

²² See II., A.

At the very least, we are able set out the different powers and recommend an appropriate categorisation.

39. It is possible to identify a principle limitation which softens the categorisation set out below. For some contributors, the research carried out does not point to the existence of strong, binding control *actually exercised* over sports federations. Thus, the mere statement of the powers available to public authorities does not provide information as to whether the management autonomy of sports federations is (very) limited in practice, or whether, on the contrary, the check provided for in law, although theoretically wide in scope, turns out to be, in essence, a *formal* check (this appears to be the case in **Estonia** and in **France**). It is not always possible, on the basis of the analysis carried out, to quantify the degree of management controls to which the sports federations are subject in practice, and in particular how such controls differ from those exercised over other types of associations which, ultimately, it is probably for the national court to determine.
40. That limitation aside, for the purposes of this study, the criteria of the *scope of the powers exercised by the public authorities over the sports federations, excluding sports control, and the binding nature of those powers* were used to identify operational categories and to classify within them the ten legal orders examined. In that regard, by way of example, reference can be made to the power to annul certain acts, the power to suspend directors of federations, the power to convene the decision-making bodies of those federations or even the power to enact binding guidelines. Evidence in the form of the delegation of certain public service missions or public administrative functions and

supervisory powers also facilitated the classification of some legal orders (**Spain, France and Poland**).

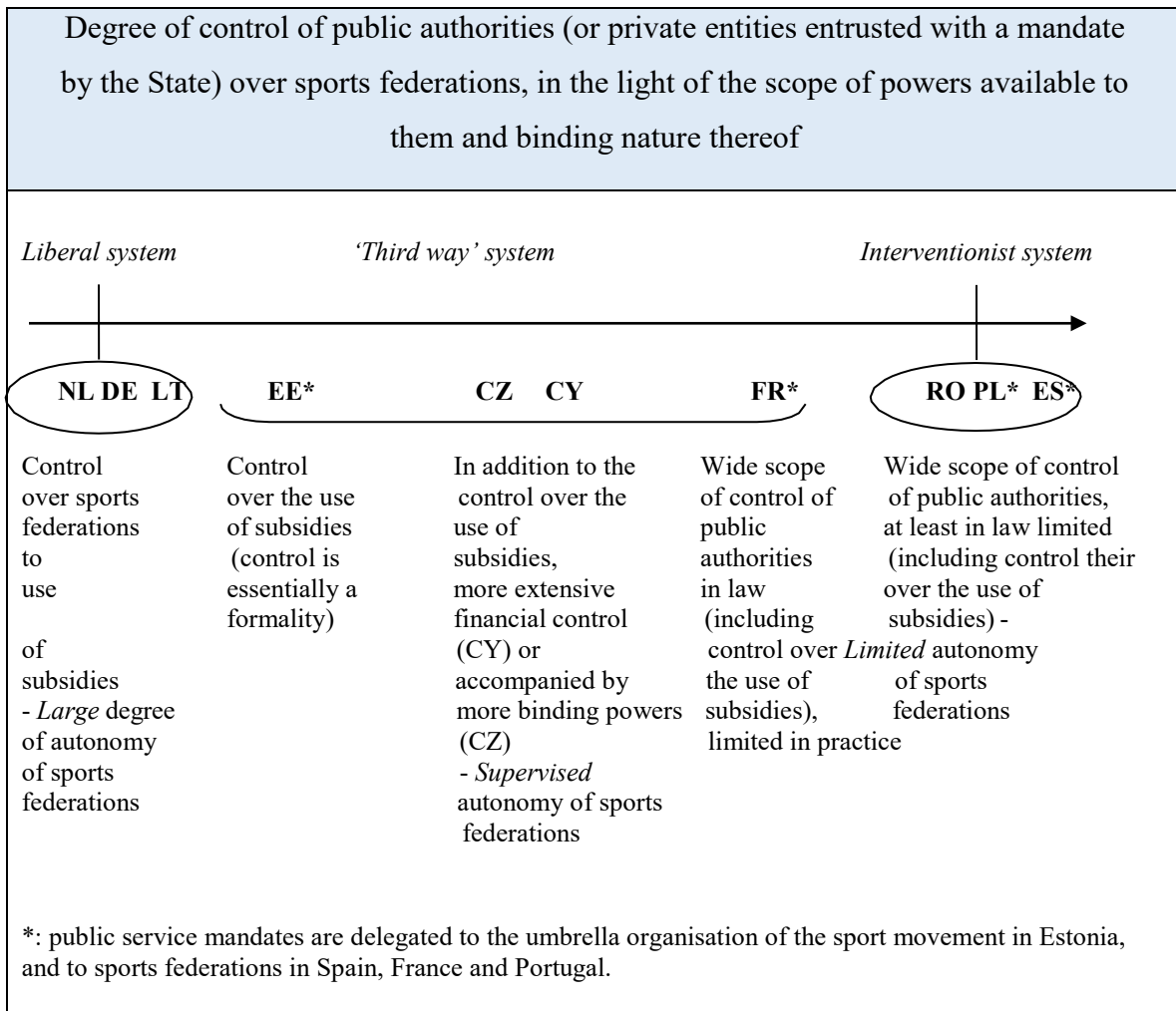
41. As stated above,²³ two major trends are distinguished in academic writings with regard to the relationships uniting the State and the public authorities. On the one hand, the *liberal system* refers to the existence of a large degree of administrative and regulatory autonomy enjoyed by the sport movement, which, in the form of a collection of private entities, is also responsible for organising and developing the practice of sport, as is the case in **Germany** and in the **Netherlands** (A). State intervention is very limited in the liberal system, and is confined, in essence, to subsidising the sport movement and distributing subsidies among its various members. There is no real mechanism for the public authorities to control how sports federations manage themselves except that, as recipients of public subsidies, they must be accountable. On the other hand, the *interventionist system*²⁴ involves a high degree of integration between State authorities and the sport movement (B). The public authorities enjoy considerable supervisory powers beyond just the financial aspect. The collapse of this group has led to weaker interventionism. Today, ‘it is mainly in southern European countries, including **France** [... or] **Cyprus**, that we find this new model of interventionism so-called “the third way”’(C).²⁵

²³ See introduction, B.

²⁴ Such a system existed, in particular, in former Soviet bloc countries.

²⁵ Reynaud J.-B., see note 8, p. 12.

42. On the basis of those three categories, the ten legal orders in question may be classified as follows:



A. LIBERAL SYSTEM, MARKED BY A LOW DEGREE OF CONTROL EXERCISED BY THE PUBLIC AUTHORITIES OVER THE MANAGEMENT OF FEDERATIONS

43. In the liberal system, followed by **Germany**, **Lithuania** and the **Netherlands**, the sport movement is largely autonomous vis-à-vis public authorities. In **Germany** and the **Netherlands**, the determination of the national policy on sport is even entrusted to sports federations. In those two Member States, the sports federations are subject only to the common rules for associations. Their objective of promoting sport does not require the application of separate rules. The public authorities play a role in the encouragement, financing and

coordination of the sport movement, but they do not intervene in any way in their internal management.

44. With regard to the use of subsidies in the three Member States classified in the liberal system, the sports federations have the same obligations as the other associations receiving subsidies.
45. In **Germany** and the **Netherlands**, the sports federations have to guarantee the proper management of the subsidies received, and guarantee that their use is in accordance with the purposes for which they were granted, by respecting the conditions set by the public authorities in the award decision, otherwise they could be forced to repay them. Moreover, in the **Netherlands**, the sports federations are usually obliged to report publicly on their activities, usually in the form of an annual report.
46. In **Lithuania**, in a system long marked by a high degree of State interventionism, the use of public funds by the sports federations is more regulated than in the **Netherlands**, in so far as it is the subject of a contract concluded between the Ministry of Sport and the federation receiving a public subsidy. In that Member State, there are also specific rules for the financing of top-level sport involving, for the federation receiving subsidies for this purpose, additional obligations such as the publication of reports on the implementation of programmes that have already been subsidised and the assurance that there is some kind of rotation within the governing bodies, with a limit on the number of times that a person can serve consecutively.

B. THE SO-CALLED ‘THIRD WAY’ SYSTEM, CHARACTERISED BY THE EXISTENCE OF SOME POWERS OF CONTROL OF THE PUBLIC AUTHORITIES ONLY PARTIALLY LIMITING THE MANAGEMENT AUTONOMY OF FEDERATIONS

47. Four of the legal orders covered by this study have been classified in the so-called ‘third way’ system located between the liberal and interventionist approaches due to the fact that the public authorities have powers allowing them a greater amount of ‘scrutiny’ than in the liberal system on the way that sports federations manage their activities. For the sports federations in the Member States in question, however, it seems that their management autonomy is only partially limited. That autonomy is, in essence, circumscribed by rules of law. A fairly clear diversity nevertheless exists in the systems established by the Member States classified in this category, in respect of which there is a gradation in the number and binding nature of the powers of control they enjoy over the management of federations.
48. In addition to the diversity that lies in the *designation of the body/entity responsible for supervising* the management of federations,²⁶ there are notable differences in the *scope of the controls exercised*. Accordingly, in **Estonia**, the Ministry of Sport reviews the execution of the administrative agreement under which it delegated to the Estonian Olympic Committee the public service mandate of administering and allocating subsidies to sports federations. The Estonian Olympic Committee reviews the use of public subsidies by sports federations,

²⁶ See *supra* II., B., 2 and 3.

being able to reduce the subsidies by half in the event of infringement of the principles of good governance. It is apparent, however, from this study of the Estonian system that the control exercised by the competent ministry is essentially a formality.

49. In the **Czech Republic**, the competent public authority, in addition to maintaining the registers of sports organisations and monitoring the use of subsidies paid to sports federations and to the entities which, in turn, redistribute the subsidies, may also examine certain administrative infringements, such as the failure to incorporate during an investigation to review the use of subsidies made by the final recipient.
50. In **Cyprus**, it appears that the power of financial control is even greater since it is accompanied by significant enforcement powers as well as other types of powers. The public authority responsible for control also has the power, for sports purposes, to approve sports federations, which are legally established. During its financial review, which applies only to sports federations that receive subsidies, the competent authority may examine the procedure for approving internal expenditure in order to identify the existence of any conflicts of interests. It also approves the annual budget of federations that receive subsidies. If irregularities in the allocation of funds granted or the implementation of a project are detected during the checks, the authority may order the grant of subsidies to be postponed or that subsidies already granted be revoked. Such penalties are also applicable in the event of disregard, by sports federations, of the principles of good governance.
51. **France** has been classified in this intermediate category since, although France has a system that could be classified as quasi-interventionist, given the level of administrative supervision carried out by the Minister for Sport over sports federations, the control exercised over sports federations turns out, in practice, to be more limited.

Admittedly, in France, public service mandates are delegated to a large majority of sports federations, aimed at promoting sport, but the supervision exercised by the Minister for Sport seems to be weaker in practice. The Minister for Sport also has the power to withdraw approval and the mandate delegated to a federation (in this second case, in particular for failure to fulfil the mandate), but this power is exercised extremely rarely. Lastly, registered public sports federations are required to amend their statutes by order of the Minister of the Interior, following a recommendation from the Conseil d'État (Council of State, France). Although, under French law, a control of the use made by sports federations of subsidies received is also provided for,²⁷ it could not be established with certainty what sort of penalties might be incurred if the use made of those subsidies is incompatible with agreed objectives for their use.

C. INTERVENTIONIST SYSTEM, SET APART BY GREATER CONTROL OF PUBLIC AUTHORITIES OVER THE MANAGEMENT OF SPORTS FEDERATIONS

52. Three Member states, namely **Romania**, **Poland** and **Spain**, have been classified in the interventionist system category. Those Member States all provide for a system of control that goes far beyond the financial review of the use made of subsidies, extending to the actual operation of the federation, and accompanied by constraints. In the Member States falling within this category, the sports federations have very limited management authority.

²⁷ Eventually, it seems that this role will be devolved, at least in part, to the recently established National Agency for Sport (with legal personality under public law).

In those three Member States, the authority vested with control over sports federations is a public and central authority. In **Poland** and **Romania**, it is the Minister for Sport, whereas in **Spain**, that role is devolved to a body with its own legal personality attached to the Ministry of Sport.

53. Furthermore, **Spain** and **Poland** share with **France** the fact of organising sport around a system of public service, with sports federations being granted public administrative functions in respect of Spain, and public service mandates in respect of Poland and France.
54. More specifically, first of all, in **Romania**, the Minister for Sport, in addition to his or her control of the use made by sports federations of the subsidies allocated to them, gives an opinion on the articles of association of sports federations and any amendments thereto, with the absence of an opinion leading to the automatic nullity of the statutes. In addition, the Minister for Sport may revoke operational approval of the federations if the objective pursued is unlawful, in the event of liquidation, or if the decisions of the general assembly of the federation in question are contrary to its articles of association or to the law, by temporarily suspending their certificate of sporting identity or removing them from the sporting register.
55. Next, in **Poland**, sports federations are subject to a greater degree of State control than other associations. Thus, the Minister for Sport approves their articles of association and any modifications made thereto. The Minister for Sport may also issue binding directives by which he or she amends the operation of federations that do not comply with the law. The Minister may also penalise any activity of the federations that does not comply with the law by issuing warnings, annulling certain decisions, or requesting that the competent court orders supervisory measures (the court may then suspend the governing bodies of the federation or even dissolve the federation in certain situations).

Furthermore, in addition to reviewing the annual and financial reports of federations, the Minister may, in the event of a continuous infringement, penalise the federation in question by reducing the amount of subsidies paid. The analysis of this practice shows that this is a power of last resort.

56. Lastly, in **Spain**, the State has delegated tasks to sports federations relating to the promotion of sport. In addition to the recognised power of the competent central authority to review the use made by federations of public subsidies, numerous other powers have been granted including some with enforcement measures. By way of example, the Spanish authority responsible for supervising sports federations can, inter alia, authorise and revoke the constitution of federations, establish their individual sports programmes, approve their budget, inspect their accounts and order a financial audit on an annual basis. This power to intervene in the internal management of federations is such that it makes it possible to convene the decision-making bodies of the federations and to suspend the president of the federation in the event of serious misconduct.

IV. APPLICABILITY OF PUBLIC PROCUREMENT RULES TO SPORTS FEDERATIONS

57. It should be noted that the search for examples carried out in this connection was particularly complex and the contributors encountered numerous difficulties.
58. This situation is based on various factors relating to the context in which the research note was compiled and the lack of remote access to relevant data, and the very subject matter of the research due to the – particularly technical – nature of the legislation in question and that relating to sports federations.

59. Given the private and associative nature of federations, it is, for example, particularly difficult for a person outside of the federation in question to have access to certain information, such as information relating to the contracts concluded by that federation, or to the precise structure of the finances. The commercial – and often confidential – nature of contracts for the supply of goods or services entered into by the sports federations makes it difficult to obtain useful information, for illustrative purposes in terms of the applicability of the legislation in question, of the actual practice of federations in that regard. It is therefore by consulting the international documentation of federations, if available, or the chance discovery of rare case-law, that assumptions have been made in this regard.
60. This finding seems to be supported by the fact that such contracts are awarded for amounts below the minimum contract value thresholds provided for by national legislation and/or European directives, beyond which a formal public procurement procedure must be engaged, which make no provision for a minimum requirement for legal publication. In so far as European market value thresholds making it compulsory to apply the rules set out in that regard by the relevant directive are particularly high (between EUR 144 000 and EUR 221 000 depending on the contracting authorities concerned), it is not therefore surprising to find only a few examples in the legal orders examined.²⁸
61. Identical considerations apply to the question whether legislation on public procurement applies to sports federations under the alternative criterion relating to the majority public funding of such federations provided for in

²⁸ In that regard, see the presentation of the general problem set out in respect of **Germany**, it being presumed, in this connection, that the majority of contracts awarded by sports federations do not reach the thresholds in question.

Article 2(1)(4)(c) of Directive 2014/24.²⁹ In the absence, in the majority of Member States, of detailed information published by the federations (beyond the mention of simple amounts) and consolidated public data relating to the exact proportion of public funding in their budgets, the award of public contracts by federations as ‘contracting authorities’ by virtue of the majority public funding criterion is particularly difficult to determine due to difficulties in identifying them.

62. It follows from the foregoing that, beyond the simple observation on the organisation, sometimes voluntary, of calls for tender by certain entities – sports federations, Olympic committees, supervisory bodies (**France, Germany, Cyprus**) – it is especially difficult to form, on the basis of the information collected, a representative view of the application by those entities of public procurement rules in the Member States in question.
63. The following points may nevertheless be highlighted.
64. None of the legislation in the Member States examined seems to address specifically and expressly the question as to whether or not sports federations are subject to public procurement rules.³⁰ This therefore leads to the examination of that question strictly from the angle of the general legislation on public procurement and the criteria set down therein.

²⁹ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65).

³⁰ Including in **France** where Article L-131-13 of the Code on Sport which refers to ‘collective interest contracts’ entered into by approved federations does not seem to constitute a *lex specialis* in the area.

65. All the Member States involved in the present study have transposed Directive 2014/24 into national law and have thus incorporated into their legislation the criteria for defining ‘contracting authorities’ as defined by Article 2(1)(4)(c) of that directive. Some Member States have expanded those criteria by adding detail, by referring expressly to the situation of legal persons governed by private law or by referring to alternative terms (see, for example, **Estonia**,³¹ **France**,³² **Czech Republic**,³³ **Romania**³⁴).
66. It should be noted, first of all, that on account of the fact that sports federations are set up as associations, the public authorities are not represented (except in very exceptional circumstances in the **Netherlands**) in the governing or representative bodies of the federations, so that the criterion of ‘administrative, managerial or supervisory board [...] more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law’ under Article 2(1)(4)(c) of Directive 2014/24 never seems to be satisfied in the selection of Member States considered.
67. In the **Netherlands**, the private nature and independent operation of sports federations, combined with the minority public funding of such federations, permits the conclusion that they are not subject to public procurement rules.

³¹ Concept of the implementation by the legal person governed by private law of duties in the general interest ‘as a primary or secondary activity’.

³² Addition of the assumption of ‘bodies with legal personality established under private law constituted by the contracting authority with a view to achieving certain activities jointly’.

³³ Concept of ‘decisive influence’ of the contracting authority over the legal person created in order to meet needs in the general interest.

³⁴ Concepts of ‘subordination’, ‘coordination’ and ‘control’ by the public authorities over the management of the bodies governed by private law in question.

68. However, it is not possible to draw such a categorical conclusion in the other legal systems classified in the liberal category or similar, where the sports federations also have significant autonomy, and the intervention of the public authorities is reduced and limited to the general issue of finance (**Germany, Estonia, Lithuania**).
69. Thus, in the case of **Germany**, although the management of federations is not considered to be subject to special control by the public authorities, and notwithstanding the acknowledgement by the tax authorities that a sports federation serves a public purpose in that it helps to meet, through the promotion of sport, a need ‘in the public interest, beyond industrial and commercial interests’,³⁵ where German sports federations are financed for the most part by public funding, the public procurement rules established in Directive 2014/24 may apply to the federations in question, if the European market value thresholds are reached.³⁶
70. Since a recent reform, the situation appears to be practically identical in **Lithuania**. Most sports federations receive public subsidies in proportions representing the main source of their funding, thus making it possible to apply public procurement rules to the Lithuanian sports federations in question under the criterion that they are financed for the most part by public funding as provided for in Article 2(1)(4)(c) of the directive.

³⁵ They are not allocated, with a view to promoting sport, a public service mandate. In that regard, the German Olympic Committee (DOSB) does not act, when redistributing public funds, as an auxiliary State body but as a service provider for the federations.

³⁶ This in addition to the possible application of specific German public procurement rules, if the subsidy or, in the event of several subsidies awarded for a shared purpose, their total amount is greater than EUR 100 000 and that the award decision requires the sports federation to apply those rules.

71. The situation in **Estonia** appears more complex. The organisation of sports competitions does not constitute, according to the Administrative Chamber of the Supreme Court, a State mandate ‘by definition’. The application of public procurement rules on the basis of the general interest criterion is not, however, completely ruled out in view of general principles relating to the management of State assets recognised by the evolving case-law of the Supreme Court. In view of the lack of certainty as to the financing, for the most part, by the State of sports federations, it does not, moreover, seem possible to conclude that public procurement rules would be applied based on the criterion of majority public financing as provided for by the directive. Lastly, the payment of a public subsidy to a sports federation, while it justifies control of the use made of the subsidy, does not transform the performance of the activities in question into a public mandate which would support a degree of control by the public authorities over the management of those federations (see also **Cyprus** in that regard).
72. The potential application of public procurement rules to sports federations seems to be a natural consequence, at the other end of the spectrum of the classifications used in this study, for the systems characterised by strong intervention by public authorities in the management of sports federations. That conclusion is, however, far from being automatic, *a fortiori* in some Member States (**Cyprus, Czech Republic** in particular) belonging to the so-called ‘third way’ systems, on account of the terms of the financing – or the lack of public funding – of those sports federations, the procedures for the delegation by the State of a public service mandate in sport or the exercise of such a mandate in the general interest (**Poland, Spain, France, Czech Republic**), or the possible application of public procurement legislation if there is direct State participation in the financing of a specific contract entered into by a sports federation (**Cyprus, Spain, Czech Republic, Romania, Estonia, Poland, Lithuania**).

73. In **Cyprus** first of all, the powers with which the Cyprus Sport Organisation has been entrusted are limited and do not allow for significant State intervention in the management of sports federations. Due to the lack of detailed information on the proportion of public financing in the budget of Cypriot sports federations, it seems that the application of public procurement legislation may result *a minima* solely from the conclusion by sports federations of contracts directly financed by the State (see below).
74. In the **Czech Republic**, it is apparent from administrative practice that a sports federation may be recognised as a contracting authority on the ground that it has been created for the purpose of meeting needs in the general interest and that it is financed, for the most part, by the State or by another contracting authority.
75. In **Poland**, sports federations, as private law entities fulfilling public service mandates, may be considered to be public law institutions, eligible for qualification as a contracting authority within the meaning of public procurement rules. The mere receipt of public subsidies for this purpose is not sufficient, however, to justify the application of public procurement on that basis alone. It is only when the financing of sports federations is, for the most part, public (which seems to be generally the case in Poland), thus establishing a relationship of subordination between the federation and the public authority, that public procurement rules may be applied. The subordinate relationship in question could also satisfy the ‘management control’ criterion set out in Directive 2014/24.
76. In **France**, sports federations appear to be subject to public procurement legislation, in accordance with the conditions set out in Article 2(1)(4)(c) of Directive 2014/24 (except for the condition relating to the appointment of members of the management bodies). That qualification seems possible first of all with regard to the public financing of such federations,

which is or can certainly be considered to be majority financing in respect of a number of federations due, in particular, to the human support provided by the State, by means of the technical advisors it pays for in addition to the direct public funding it provides. That qualification could also possibly be made on account of the terms of the legal supervision exercised by the State over sports federations where they carry out a public service mission, or are declared to be public interest associations and, at the very least, from a formal point of view, over approved federations. It appears possible, on the basis of such rules, to consider, in theory at least, that the State participates in the ‘management control’ of those federations, both in terms of their obligations as such and their financing. However, the current reforms in France seek to weaken that link and challenge, in view of the doubts raised in that regard in numerous cases by the French Ministry of Sport, the effectiveness of State control.

77. In **Spain**, the issue is also controversial. For the National Sports Council, which has been entrusted with powers in terms of the economic control of federations, public procurement rules apply to sports federations as mixed entities carrying out public administrative tasks, irrespective of any possible public financing. For the most part, according to academic writings, sports federations, as legal persons governed by private law, are not subject to public procurement rules, even if financed by the State. In the light of this, it cannot definitively be concluded that Spanish sports federations are subject to public procurement legislation.
78. In **Romania**, pursuant to the law on public procurement, sports federations may have the status of contracting authorities, in accordance with the criterion of ‘body governed by public law’ provided for by the directive. While a few examples of public contracts falling within the scope of Romanian public procurement legislation could be found,

it was not possible to determine with certainty from examining those contracts whether public procurement legislation was applied on the basis of the criteria, transposed into Romanian law, set out in Article 2(1)(4)(c) of the directive or specific provisions of Romanian law in the case of direct State participation in the financing of a specific contract entered into by the sports federation (which, however, seems unlikely in view of the value of the contracts in question which are well below the thresholds fixed in that regard by Romanian law).

79. In that regard, there is an assumption in many systems (**Germany, Cyprus, Estonia, France, Lithuania, Poland, Czech Republic, Romania**) that public procurement legislation (or, at the very least, an obligation to hold an invitation to tender) is applied by sports federations in the case of direct State participation in the financing of a specific contract entered into by a sports federation. Depending on the case considered, the scope of this finding seems to vary. It should be noted that this assumption may, in some cases, be covered by a special provision – Article 13 of Directive 2014/24 – when it comes to public works contracts of a certain value, such that the application of public procurement rules to the contracting federation is thus likely to result not from Article 2(1)(4)(c) of the directive, but from that particular provision. Depending on the case considered, there may be a willingness on the part of the State to extend the scope of the application of public procurement legislation to other types of contracts, according to refined or supplementary criteria (**Romania**),³⁷

³⁷ See Article 6(2)(b) of Law No 98 on public procurement, under which the contract covers certain activities including sports activities.

Cyprus, ³⁸ **Czech Republic** ³⁹), or, by applying civil law to that contract, to require the federation in question to initiate a tender procedure in accordance with the principles of equal treatment, fair competition and transparency in order to obtain public co-financing (**Poland**).

80. Lastly, a few examples are provided of the voluntary application by sports federations, in some Member States (**France, Czech Republic**), of tendering rules stemming from public procurement rules, on account either of the intention of the federations involved, or the organisation of such a scheme under the relevant law.

V. CONCLUSION

81. The comparative study carried out in respect of ten European Union Member States has highlighted a significant diversity in the organisation of sport on a national basis. That diversity is seen, in the first place, in the choice of public bodies or private entities entrusted with supervisory tasks in respect of sports federations. It also emerges from the study that some States have chosen to organise sport, at national level, by entrusting the sports federations themselves with essential responsibilities in terms of the promotion of sport, while others have opted for a public system in this field, creating proper public services for sport. Lastly, other Member States do not fall into either category, having opted for

³⁸ Cypriot sports federations seem to be required to initiate a tender procedure to conclude any goods or services contract, in strict compliance with the 2016 law regulating public procurement procedures, where the costs related to the contract are likely to be covered by public subsidies.

³⁹ The 'subsidised' contracting authority is defined more broadly than what is provided for in Article 13 of Directive 2014/24.

systems for cooperation between public authorities and the sport movement, or systems that place greater limits on their autonomy.

82. In the second place, the comparative analysis of those ten systems demonstrates the significant diversity in the systems of control over the management of sports federations. Two diametrically opposed tendencies have been identified in this regard. While, in some Member States, qualified as *liberal* in this field, there is no specific power of control in respect of sports federations, which have a fairly broad degree of management autonomy, the same is not true in so-called *interventionist* Member States. In the latter Member States, the powers of control entrusted to the public authorities are, at least in law, numerous and accompanied by constraints. Between those two extremes, some Member States, classified as operating under a *third way*, have established a lighter control system than that which exists in interventionist systems, monitoring the way sports federations must manage themselves.
83. In the last place, in view of the fact that all the Member States covered by this study have transposed Directive 2014/24 into national law, the research carried out has made it possible to draw certain lessons on the *applicability of public procurement rules to sports federations*. Accordingly, except in the Member State in which it is clear that the proportion of public subsidies in the financing of federations is in the minority and where there is no power of control by the public authorities over sports federations, *it appears that public procurement rules may, at least in part, be applied*. In the light of the difficulties encountered in identifying examples of such public contracts concluded by sports federations, it was not always possible to determine whether those rules are applied on the basis of the transposition into national law of Article 2(1)(4) of Directive 2014/24 or on another basis. Nor was it possible to specify whether such federations, in the

Member States in question, consider their management to be ‘subject to supervision [by] authorities or bodies’ governed by public law, as provided for in the second alternative listed in Article 2(1)(4)(c) of that directive.

[...]